

11687
DECISION



20050
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-199454

DATE: November 16, 1981

MATTER OF: Martin B. Bennett - Detail to higher graded position

DIGEST: Grade GS-11 investigator with the Food and Drug Administration (FDA) was assigned as Acting Supervisory Inspector of the Product Safety Group in May 1973, but effective June 10, 1973, employee and his group were transferred from FDA to Consumer Product Safety Commission (CPSC). On and after that date employee continued to perform same supervisory duties at CPSC until February 1, 1974. Employee's claim for retroactive temporary promotion and backpay for overlong detail under Turner-Caldwell decision is denied. It has not been shown that a higher graded position had been established at FDA or CPSC prior to October 11, 1973. After that date the period the employee was detailed to the established, higher graded position did not exceed 120 days.

In this decision we are considering the appeal by Mr. Martin B. Bennett of our Claims Group's denial of his claim for a retroactive temporary promotion and backpay based on our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 id. 427 (1977). We held in our Turner-Caldwell decisions that employees officially detailed to established higher level positions for more than 120 days without prior Civil Service Commission approval are entitled to retroactive temporary promotions with backpay beginning with the 121st day of the detail until the detail is terminated. We here sustain the Claims Group's disallowance since we hold that Mr. Bennett has failed to prove that he was detailed to an established, higher graded position for more than 120 days.

The administrative record shows that on May 21, 1973, Mr. Bennett, who was then a grade GS-11 investigator working for the Food and Drug Administration (FDA), was assigned as Acting Supervisory Inspector of the Product Safety Group formed within the New York District of the FDA. Effective, June 10, 1973, Mr. Bennett and his group were transferred

from the FDA, Department of Health, Education and Welfare, to the Consumer Product Safety Commission (CPSC)--an independent Federal regulatory agency--under the provisions of the Consumer Product Safety Act. See 15 U.S.C. § 2079 (1976).

Mr. Bennett continued to perform the same supervisory duties with the CPSC until February 1, 1974. The CPSC denied Mr. Bennett's claim for retroactive temporary promotion and backpay contending that the position of Supervisory Consumer Safety Officer, grade GS-12, to which Mr. Bennett was formally detailed by CPSC from December 3, 1973, through February 1, 1974, was not officially established by CPSC until October 11, 1973.

On the preceding factual basis our Claims Group adjudication of April 28, 1980, denied Mr. Bennett's claim since an employee is entitled to a retroactive temporary promotion and backpay only if he has been detailed to an established higher graded position for more than 120 days. Since the position was not established at grade GS-12 until October 11, 1973, Mr. Bennett's detail to an established grade GS-12 position at CPSC from October 11, 1973, to February 1, 1974, did not exceed 120 days which precludes any entitlement under our Turner-Caldwell decisions.

In submitting his claim Mr. Bennett argued that he was detailed to a higher graded position at FDA. He has offered no evidence to show that the position in question was classified at GS-12 by the FDA. Moreover, all personnel records were transferred in the transfer of functions from FDA to CPSC, and the CPSC has reported based on its records that no higher graded position was established in either agency prior to October 11, 1973, the date that the grade GS-12 position of Supervisory Consumer Safety Officer was established in CPSC.

Mr. Bennett's present submission does not state any grounds for appeal, but instead requests information about the appropriate appeal procedure. In addition, it contains a Freedom of Information Act request. As a result, although the record before us indicates that Mr. Bennett performed supervisory duties from May 21, 1973, to February 1, 1974, it has not been shown that a higher graded position had been established at FDA or CPSC prior to October 11, 1973.

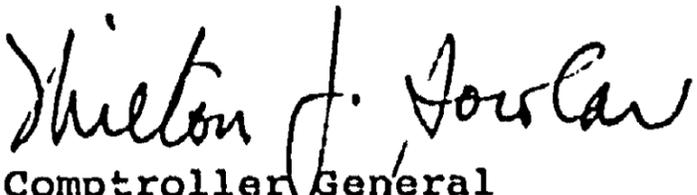
Mr. Bennett's appeal letter provides no additional information upon which we could reconsider the Claims Group settlement. Therefore, we find no basis upon the present record to allow Mr. Bennett's claim.

This Office is always willing to further consider denied claims upon the receipt of new evidence. Our procedures for review and reconsideration of claims settlements are set forth in Part 32 of title 4, Code of Federal Regulations, which provides, in pertinent part:

"§ 32.2 Basis for request for review.

"Applications for review of claim settlements should state the errors which the applicant believes have been made in the settlement and which form the basis of his request for reconsideration."

Part 81 of title 4, Code of Federal Regulations, sets forth the policy of our Office with respect to the public availability of GAO records. A request to inspect or obtain a copy of an identifiable record of GAO must be submitted in writing to the Director, Office of Policy, United States General Accounting Office, 441 G Street NW., Washington, D.C., 20548, for appropriate processing.

for 
Comptroller General
of the United States